

FILED

JUN 27 2013

Clerk, U.S. District Court
District Of Montana
Helena

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

SODJINE PAUL ANATO and
SARAH ANATO,

Plaintiffs,

vs.

USDA RURAL DEVELOPMENT,
LAD BARNEY, CAROL LECHNER,
JOANNE BOWERS, MATT JONES,

Defendant.

No. CV 12-103-GF-SEH

ORDER

United States Magistrate Judge Keith Strong entered Findings and Recommendations in this matter on June 4, 2013.¹ Plaintiffs filed objections on June 18, 2013.² The Court reviews *de novo* findings and recommendations to which objections are made. 28 U.S.C. § 636(b)(1).

Upon *de novo* review of the record, I find no error in Judge Strong's Findings and Recommendations and adopt them in full.

¹ Document No. 36

² Document No. 37

ORDERED:

1. The United States' Motion to Substitute³ is GRANTED. The United States shall be substituted as the proper Defendant in Counts 2, 5, 6, 7, 8, 9, 10, 11 and 15 of the First Amended Complaint in place of federal employees Lad Barney, Carol Lechner, Joanne Bowers and Matt Jones, as the United States has filed a certification⁴ under 28 U.S.C. § 2679(d) stating that these individuals were acting within the scope of their employment with the United States Department of Agriculture at the time of the acts or omissions alleged in the First Amended Complaint.

2. The United States' Motion to Dismiss⁵ is GRANTED.

3. Count 3 of the First Amended Complaint is DISMISSED without prejudice for lack of jurisdiction as the Federal Court of Claims has exclusive jurisdiction over contract claims against the United States exceeding \$10,000.

4. Count 9 of the First Amended Complaint is DISMISSED with prejudice because the United States is immune from liability for constitutional torts.

5. Counts 2, 5, 6, 7, 8, 10, 11 and 15 of the First Amended Complaint

³ Document No. 27-1

⁴ Document No. 28-1

⁵ Document No. 27-2

are DISMISSED without prejudice for lack of jurisdiction as Plaintiffs have failed to exhaust their administrative remedies as required under 28 U.S.C. § 2675(a).

6. Counts 16, 17, 18, 19 and 20 of the First Amended Complaint are DISMISSED without prejudice for failure to state a claim upon which relief can be granted.

7. Counts 1, 12 and 14 of the First Amended Complaint are DISMISSED with prejudice, as time-barred, to the extent they are based upon violations of the Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691 *et seq.*, occurring prior to July 2008.

8. Plaintiffs' Motion for Preliminary Injunction⁶ is DENIED.

9. Plaintiffs' demand for a jury trial is DENIED with respect to all claims against the United States.

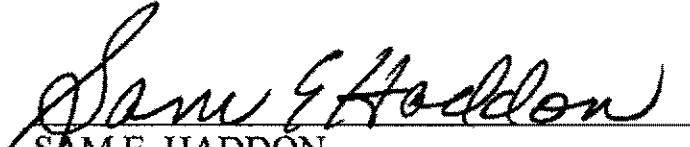
10. On or before July 12, 2013, Plaintiffs shall submit a report with the Court stating:

- a. Whether any Count in the First Amended Complaint asserts a claim against Defendants Lad Barney, Carol Lechner, Joanne Bowers and Matt Jones, in their individual capacities; and

⁶ Document No. 25

b. If so, the date Plaintiffs intend to effect service of process on each of these Defendants in compliance with Fed. R. Civ. P. 4(e).

DATED this 27th day of June, 2013.


SAM E. HADDON
United States District Judge